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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE  
OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement\* submitted by the International Federation of Human Rights Leagues,  
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated  
in accordance with Economic and Social Council resolution 1996/31.

[4 February 2000]

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\* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Independence of the judiciary and the struggle against impunity in Cambodia

The International Federation of Human Rights Leagues (FIDH) and its partner organizations in Cambodia, the Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Defence of Human Rights (LICADHO) wish to communicate their serious concern at the run-down state of the whole of the machinery of justice in Cambodia, which it was possible to evaluate during an international mission of inquiry conducted by the FIDH (see report No. 284 of the FIDH, December 1999), particularly with regard to the persistence of impunity arising from that situation.

Deficiencies exist in the judiciary at every level - the decisions of judges responsible for public prosecutions, judgements handed down and the enforcement of those decisions. The FIDH must state with regret that all too often complaints are ignored or are ineffective. As a result of shortages of equipment, staff and documentation, the administration of justice, assessed by universal criteria relating to fair trials, is extremely unreliable and fails to respect the fundamental rights of the individual to be given a fair hearing. For instance, hastily conducted procedures adversely affect the presumption of innocence; periods of detention often exceed the maxima laid down by the Criminal Code; the time required to arrive at judgements is excessive; very often accused persons do not have the assistance of counsel; etc. According to LICADHO, 30 per cent of the "confessions" obtained by the police during questioning are made under torture, and those "confessions" are the only evidence taken into account by the courts for purposes of sentencing of suspects.

The judges today are poorly trained, poorly equipped and poorly paid. The result is a very high level of corruption in the courts. It is clearly necessary to improve the training and the skills of judges and, generally speaking, to increase the budget allocation for the remuneration of the entire staff of the judiciary and for the functioning of the courts. It is equally essential to reorganize the Higher Council of the Magistracy (CSM) to make it genuinely functional and effective. Finally, the status of judges and the organization of the judiciary should be safeguarded by legislation; this is not the case at present. Similarly, certain basic legislative instruments, and in particular the Penal Code and the Code of Criminal Procedure, need to be adopted as soon as possible.

Impunity is endemic in Cambodia. In the view of the FIDH, the principal beneficiaries are the members of the security forces and the "high and mighty", and its principal causes are political interference and incompetence and corruption within the judiciary. Notwithstanding speeches proclaiming the good intentions of the Cambodian Government, our organizations consider that the supreme authorities of the State are not showing sufficient determination to put an end to this problem.

The United Nations Commission on Human Rights, in its resolution 1999/76, stressed that addressing the problem of impunity in Cambodia remained "a matter of critical and urgent priority". In particular, article 51 of the 1994 Law on civil servants, which institutionalized impunity inasmuch as it provided that an official could not be prosecuted without the prior

authorization of his responsible minister or of the Council of Ministers, should be repealed. An amendment to that Law was introduced in September 1999 but was still inadequate. The FIDH and its partner organizations consider that the total repeal of this provision would constitute a strong political signal and a major victory in the war against impunity.

Another regrettable aspect of the present situation consists of the interferences, acts of intimidation and threats against the courts committed by members of the police, the gendarmerie and the armed forces. These pressures are covered by the same impunity as acts committed by the security forces in Cambodia (including crimes of bloodshed). A study conducted by the partner organizations of the FIDH between January 1997 and October 1998 revealed that "at least 263 persons were executed by members of the police forces, the gendarmerie, the army, the militias, the protection services and public officials" during that period. According to information compiled by those organizations, none of the 209 suspects identified were brought before the courts. In addition, the FIDH deeply regrets that the police or the gendarmerie use excessive force when making arrests or in order to obtain confessions. Cases of torture are frequent: in 1999 LICADHO recorded 506 cases of torture of arrested suspects inflicted by police officers, gendarmes or members of the armed forces.

Cases of rape are not infrequent, and very often the perpetrators escape justice by paying a small sum of money to the families of the victims. Cases exist where girls between ages 3 and 6 have been raped and the families of the victims have been forced to resign themselves to refraining from pressing charges in exchange for sums of money ranging between US\$ 15 and US\$ 300. In addition, it frequently happens that the political or administrative authorities at all levels interfere with the police or the gendarmerie to have investigations directed along lines which suit them or to ensure that they yield no result. This situation sometimes leads individuals to conclude that the only means of defending their particular interests is to resort to violence, sometimes, too, the population decides to take the law into its own hands. Mob justice of this kind is developing in Cambodia to a disquieting degree.

Furthermore, the FIDH and its partner organizations consider that it is today essential, from both the domestic and international standpoints, that criminal liability for the atrocities committed by the Khmer Rouge be determined and that those who have been guilty of the most serious crimes be called to account. However, in view of the serious shortcomings in the functioning of the Cambodian judiciary, the FIDH considers that Cambodian justice is not in a position to take cognizance on its own of those crimes while ensuring due respect for the standards guaranteed by international instruments, and in particular the guarantees laid down in article 14 of the 1996 International Covenant on Civil and Political Rights. Even if one leaves out of account the problems of corruption and political interference, which could possibly be kept under control in the context of proceedings taking place under close international supervision, the Cambodian judiciary would have great difficulties with regard to competence and technical aspects, those difficulties are in fact and to a considerable extent consequences of the Khmer Rouge regime which is to be placed on trial. In such conditions a major international contribution is essential.

Cambodia has no intention of waiving that prerogative of sovereignty consisting of the right of a State to try its own criminals. That requirement must be respected; but it must also be made compatible with the requirement of justice expressed by the international community. The FIDH and its partner organizations consider that certain crimes are of too great a degree of magnitude and seriousness to be addressed solely within the framework of the State in which they were perpetrated and fall within the scope of an international obligation of repression. Thus if Cambodia were to take the initiative of adopting the legal provisions necessary to meet the legitimate demands of international law (including any constitutional changes which would facilitate that step) there would be no violation of national sovereignty, but simply the implementation of international law currently in force. Cambodia must be in a position to adopt specific rules guaranteeing a fair and impartial trial.

With the foregoing in mind, the FIDH requests the Commission to do all in its power to obtain the following:

1. That the trials can be held in Phnom Penh;
2. That the rules of procedure provide all the guarantees required in international law and be drawn up accordingly;
3. That Cambodian judges be closely associated with the proceedings. If the rules define precisely and transparently the different stages in the trial, there can be no objection to having a majority of Cambodian judges. Similarly, the president of the court may be of Cambodian nationality provided that, like the other judges, he has not, and never has had, any political attachments. All the members of the court should be appointed with the assistance of the United Nations;
4. It is absolutely essential that the prosecutor should be totally independent and a non-Cambodian national. In addition, the government authorities must allow him complete freedom of action and ensure that execution of his orders is not hindered in any way. It is also essential that the Cambodian Government should not intervene in the choice of the persons to be placed on trial;
5. No objection could be made to the appointment of an investigating magistrate, or a court of investigating magistrates, empowered to collect evidence in favour of as well as against the accused;
6. Finally, the necessary measures for the protection of both witnesses and members of the court during and after the trial proceedings must be adopted.

In conclusion, the FIDH, the ADHOC and the LICADHO consider that the organization of the trial of the Khmer Rouge is a priority, but that it should not divert attention from other priorities. The efforts made to bring those criminals to judgement should be paralleled by

adequate measures to restore the confidence of the Cambodian people in their national system of dispensation of justice. Association of the Cambodian judiciary with the trials of the Khmer Rouge in accordance with universally accepted criteria governing justice cannot fail to throw a positive light on the functioning and the credibility of the country's machinery of justice. Thus the court entrusted with the task of pronouncing judgements on the exactions committed by the Khmer Rouge could contribute to the restoration of the credibility of the judiciary in its entirety vis-à-vis the population.

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